United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No 1977. 619

CHARLES H. MERILLAT AND MASON N. RICHARDSON, APPELLANTS,

vs.

SADIE L. HOOKER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JANUARY 2, 1909.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 7, 1909.

In the Court of Appeals of the District of Columbia.

No. 1977.

CHARLES H. MERILLAT ET AL., Appellants.
vs.
SADIE L. HOOKER.

a Supreme Court of the District of Columbia.

No. 49993. At Law.

SADIE L. HOOKER, Plaintiff,
vs.
CHARLES H. MERILLAT and MASON N. RICHARDSON, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration in Replevin.*

Filed November 29, 1907.

In Justice's Court of the District of Columbia.

Sub-District No. 1.

No. 8687, 49993.

SADIE L. HOOKER, Plaintiff,
vs.
CHARLES H. MERILLAT and MASON N. RICHARDSON, Defendants.

DISTRICT OF COLUMBIA, *To wit:*

The Plaintiff sues the defendants for wrongfully taking and detaining said plaintiff's goods and chattels, to wit: eight promissory notes, each for the sum of Thirty-three and 34/100 Dollars executed by Alice C. Lawson and S. V. Zahn and payable to the order of Ed-

ward Leitch all dated Nov. 23, 1905, and bearing interest at six per centum per annum which said goods and chattels are of the value of Ten dollars ($10.00). And the plaintiff claims that the same may be taken from the defendant and delivered to her; or if they are eloigned, that she may have judgment of their said value, and all mesne profits and damages, which she estimates at $10, besides costs.

LESTER & PRICE,
Attorneys for Plaintiff.

2 *Affidavit.*

The Plaintiff Sadie L. Hooker being first duly sworn according to law, makes oath that, according to her information and belief she is entitled to recover possession of the chattels proposed to be replevied in this action, being the same described in the declaration hereto annexed; that the defendant has seized and unlawfully detains the same; that the said chattels were not subject to such seizure or detention, and were not taken under any Writ of Replevin between the parties; and that the goods and chattels described in the above declaration are not of the value of more than three hundred dollars.

SADIE L. HOOKER.

Subscribed and Sworn to before me, this 13" day of November, A. D. 1906.

[SEAL.] ALBERT C. FLOYD,
Notary Public.

Address: Treasury Department, Office of the Register.

3 *Writ of Replevin.*

Filed November 29, 1907.

In Justice's Court of the District of Columbia.

Sub-District No. 1.

No. 8687, 49993.

SADIE L. HOOKER, Plaintiff,
vs.
CHARLES H. MERILLAT ET AL., Defendant-.

The President of the United States to the Marshal for Said District, Greeting:

The plaintiff in this action having entered into an undertaking, with surety, as required by law, you are therefore hereby commanded to take the goods and chattels, claimed by the plaintiff, to wit: Eight promissory notes each for the sum of thirty three and 34/100 dollars executed by Alice C. Lawson and S. V. Zahn and payable

to the order of Edward Leitch all dated Nov. 23rd, 1905, and bearing interest at six per cent. per annum of the value as stated of Ten Dollars ($10.) from the defendant- and deliver the same to the plaintiff. And warn the defendant- to appear in said court on or before the tenth day, exclusive of Sundays and legal holidays, occurring after the day of the service of this writ, and answer said action; and that if *he* make default in so doing the plaintiff
4 may proceed to judgment and execution.

Given under my hand and seal this 12th day of December A. D. 1906.

CHARLES S. BUNDY, [SEAL.]
Justice of the Peace.

Address: No. 416-18 5th St. N. W., Columbian Building.

(Endorsed:) Service of within writ accepted this 13 day of December 1906. Notes described herein surrendered to plaintiff to await final adjudication of this cause. Mason N. Richardson, Att'y for Merillat.

NOVEMBER 22, 1907.

Judgment for plaintiff for possession of goods replevied as p-r schedule and for 1 cent damages for detention of same and with $4.60 costs.

C. S. BUNDY, *J. P.* [SEAL.]

Memorandum.

November 26, 1907.—Undertaking on appeal from judgment, Charles S. Bundy, J. P., approved.

5 *Certificate of Justice of the Peace on Appeal.*

Filed November 29, 1907.

In Justice's Court of the District of Columbia.

Sub-District No. 1.

No. 8687, 49993.

SADIE L. HOOKER, Plaintiff,
vs.
CHARLES H. MERILLAT and MASON N. RICHARDSON, Defendants.

Date.	Proceedings.
1906.	
Dec. 12.	Plaintiff made deposit on a/c of Costs.
" "	Plaintiff filed declaration and undertaking.
" 15.	Defendants appeared herein and delivered the notes described in declaration to plaintiff in lieu of having same taken under writ of replevin.

Nov. 22. Parties appeared and joined issue in plea of not guilty and proceeded to trial. Testimony heard and cause was argued by counsel and submitted.

" " Judgment for plaintiff for possession of the articles replevied as per schedule and for one cent damages for detention of same, and for costs of suit. Appeal noted by defendants.

Nov. 26. Appeal perfected by execution of an undertaking with Harriet Richardson and Charles W. Richardson sureties.

" 29. Certified to court on appeal.

I, Charles S. Bundy, Justice of the Peace in and for the
6 said Sub-District, do hereby certify that the foregoing is a true copy of my Docket entries and of all the proceedings had before me in the above cause, and that the annexed documents are all the original papers filed in said cause.

Given under my hand and seal this 29th day of November A. D. 1907.

CHARLES S. BUNDY, [SEAL.]
Justice of the Peace.

Costs paid by Plaintiff..... $4.60
Costs paid by Defendant..... $1.50

Memorandum.

October 26, 1908.—Verdict for plaintiff for return of property replevied and one cent damages.

Opinion of Court.

Filed October 26, 1908.

Law. No. 49993.

HOOKER
v.
MERILLAT ET AL.

This is a suit by Sadie L. Hooker against the defendants
7 Merillat and Richardson to recover possession of certain promissory notes claimed to belong to her, and which were taken on execution issued out of Equity cause No. 24,084 to enforce a decree against Mellen C. Hooker, the husband of the plaintiff.

The defendants rely, for their defense, upon their contention that said promissory notes were purchased out of, and therefore represent, funds belonging to Mellen C. Hooker, the husband of plaintiff. In other words, the contention of the defendants is that said funds were derived by the plaintiff from her husband, Mellen C. Hooker as a voluntary gift or conveyance in fraud of his creditors, and that therefore the gift or conveyance is void.

1. The law respecting voluntary conveyances in fraud of creditors is, of course, well settled. And a clear distinction is made in the law between prior or subsisting and subsequent creditors. In the case of existing creditors, a voluntary conveyance is void as to them, *even though made without any fraudulent intent,* and evidence as to the good faith of the debtor in making the conveyance is inadmissible, unless it be also shown that the debtor was not in embarrassed circumstances at the time but had retained sufficient property to amply respond to all his existing creditors. Walter *v.* Lane, 1 MacA. 284. Offutt *v.* King, 1 MacA. 317. Parish *v.* Murphree, 13 How. 98. Kehr *v.* Smith, 20 Wall. 35. Lloyd *v.* Fulton, 91 U. S. 485 (in which the Court said: "The rule as now established is,
that prior indebtedness is only presumptive and not con-
8 clusive proof of fraud). Bean *v.* Patterson, 122 U. S. 499.
Wooster *v.* Devote, 6 Mack. 362. Edwards *v.* Entwistle, 2 Mack. 56.

2. It is also firmly established that, a voluntary conveyance being presumptively fraudulent as to existing creditors, the burden of showing the fairness and good faith of the transaction is upon the adverse party. 14 A. & E. (2nd ed.) 308, citing Lloyd *v.* Fulton, 91 U. S. 485 and other cases collected.

3. The first question of law to be determined in this case is whether the defendants were *existing creditors* competent to complain of a voluntary conveyance by Hooker, even if it be said that Hooker did make a voluntary conveyance which is void as to creditors. It is well settled that the term *"creditors"* is one of very broad signification, and covers all parties who have demands, accounts, interests, or causes of action for which they might recover any debt, demand, penalty, or forfeiture. 14 A. & E. (2nd ed.) p. 251 *et seq.* and cases collected. And it has been expressly held in this jurisdiction that where a conveyance is made pending an action to recover unliquidated damages even for a tort, and a judgment is eventually entered in favor of the plaintiff in such tort action, he must be held to have been an existing creditor at the time of the conveyance by his debtor, although made pending the suit. Barth *v.* Heider, 7 D. C. (General Term) 71. The mere fact, therefore, that the suit of Richardson *v.* Hensey *et al.,* Equity No. 24,084, had not been determined and a decree entered prior to the delivery
or assignment of the policy herein question would be of no
9 consequence. If the defendants were, nevertheless, *existing creditors* of Mellen C. Hooker, and if Mellen C. Hooker made a voluntary conveyance, it would be void as to them.

4. The next question that arises in the case, and the most important question in the case, is as to whether the delivery or assignment of the insurance policy here in question was either (*a*) void because notice to the Insurance Company was not given as required by the policy and the statute law of New York, or (*b*) void as being a voluntary conveyance by Mellen C. Hooker.

(*a*) The objection urged by the defendants against the validity in law of the delivery or assignment of the policy, because no notice in writing was given to the Insurance Company, is untenable. It is

true that the Insurance Company could not have been compelled to recognize as the beneficiary under the policy anyone not nominated in the manner prescribed. Sangunitto *v.* Goldey, 88 App. Div. N. Y. 78. Lawler *v.* National Life Ass'n. 83 Hun. (N. Y.) 393. But the objection that a designation or change of beneficiary is not in writing, is one altogether personal to the Insurance Company, and therefore may be insisted upon or waived by it, as it sees fit. Lawler *v.* National Life Ass'n., 83 Hun. (N. Y.) 395. It is a right like the right to plead the statute of limitations, or the statutes of frauds, or any other statute prescribing formalities respecting contracts and causes of action. And being like them, of course the objection cannot be raised by a mere stranger, and a creditor is held by all the authorities to be such a stranger to the transaction that he
10 cannot question the transfer of his debtor's goods on the ground that it was not in writing as required by statute. See Bishop on Contracts sec. 1324 (2nd ed.), Kemp *v.* National Bank (C. C. A.) 109 Fed. 48, Vol. 29 A. & E. (2nd ed.) pp. 808-809, and Vol. 19 A. & E. (2nd ed.) p. 184. It follows, therefore, that, if the delivery or assignment of the policy be found, as a fact, to have taken place, it would not be invalidated because not in writing. The question of fact, however, as to whether the delivery or assignment of the policy took place, is one for the determination of the jury in view of all the facts and circumstances in evidence.

(*b*) Respecting the further question whether the delivery or assignment of the policy, if it took place, constituted a voluntary conveyance by Mellen C. Hooker, it must be ruled as matter of law that it did not constitute a voluntary conveyance by Mellen C. Hooker. Because Lester M. Hooker (and not Mellen C. Hooker) was the party who, by the express terms of the policy had the absolute right to change the beneficiary at any time, and by changing the beneficiary he must be considered as having simply exercised his right. He, and not Mellen C. Hooker, is the party who must be considered as having made whatever conveyance was made.

5. The main question of fact, therefore, to be determined in this case is, whether the delivery or assignment of the policy took place. If it did, the verdict must be for the plaintiff; but if it did not,
11 the verdict must be for the *plaintiff; but if it did not, the verdict must be for the* defendants. And upon this question the burden of proof is upon the plaintiff. Smith *v.* Cook, 10 App. 495. Seitz *v.* Mitchell, 94 U. S. 580, 582.

THOS. H. ANDERSON, *Justice.*

Supreme Court of the District of Columbia.

FRIDAY, *November 6th,* 1908.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice, presiding.

* * * * * * *

Before Judge Anderson.

No. 49993. At Law.

SADIE L. HOOKER, Plaintiff,
vs.
CHARLES H. MERILLAT and MASON N. RICHARDSON, Def'ts.

Upon consideration of defendants' motion for a new trial filed herein, it is ordered that said motion be, and the same is hereby overruled and judgment on verdict is ordered. Thereupon, it is considered and adjudged that the plaintiff herein recover of defendants herein possession of eight promissory notes, each for the sum of
Thirty-three and 34/100 Dollars executed by Alice C. Lawson
12 and S. V. Zahn, and payable to the order of Edward Leitch,
all dated Nov. 23, 1905 and bearing interest at six per cent. per annum, together with one cent damages against said defendants and Harriet Richardson and Charles W. Richardson, their sureties, and together with costs of suit to be taxed by the Clerk and have execution thereof.

From the aforegoing the defendants by their attorney in open Court, note an appeal to the Court of Appeals. Whereupon, bond to operate as a Supersedeas is hereby fixed in the penalty of Three Hundred Dollars.

Memorandum.

November 20, 1908.—Appeal bond approved and filed.

Supreme Court of the District of Columbia.

FRIDAY, *December* 4, 1908.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice presiding.

* * * * * * *

13 Before Judge Anderson.

No. 49993. At Law.

SADIE L. HOOKER, Plaintiff,
vs.
CHARLES H. MERILLAT ET AL., Def'ts.

Come now the defendants by their attorney and submitting to the Court the Bill of Exceptions taken at the trial of this cause, move that the same be signed and ordered of record, *nunc pro tunc,* which is hereby accordingly done and so ordered.

Bill of Exceptions.

Filed December 4, 1908.

In the Supreme Court of the District of Columbia, Holding a Circuit Court for said District.

At Law. No. 4993.

SADIE L. HOOKER
vs.
CHARLES H. MERILLAT ET AL.

Be it remembered, that at a trial of the issues in this case joined, before the Honorable Thomas H. Anderson, Associate Justice of the Supreme Court of the District of Columbia, and a jury regularly impannelled and sworn, to try the issues between the plaintiff
14 and the defendants herein, on Wednesday October 21, 1908, and continued from time to time until Monday October 26, 1908, testimony was given and proceedings had as follows:

To maintain the issues on her part joined, the plaintiff produced as a witness HOSEA B. MOULTON, who testified that he is an attorney-at-law, and represented the plaintiff in the Fall of 1905; that he had full knowledge of the notes described in the declaration in this case; that they were written in his office, by him or under his direction; that application was made to him for a loan by the makers thereof, and he applied to the plaintiff for the money, who agreed to make the loan and sent him the check mentioned below for the amount, or else delivered it to him in person, the proceeds of which were by him loaned, and is now represented by said notes, and others, all of which were secured by a chattel deed of trust, and which were, after their execution, delivered by him to the plaintiff; that he gave the notes to Mrs. Hooker personally, mailed them to her, or else sent them to her by her husband; that his best recollection is that he delivered them to her in person; that plaintiff gave him her personal check dated November 24, 1905, for $422.50, payable to his order, drawn on the American National Bank, which was by him endorsed and cashed and the proceeds loaned as stated.

Counsel thereupon agreed that the notes described in the declaration came into the possession of the defendants by virtue of a writ of execution issued out of the Supreme Court of the District
15 of Columbia against Mellen C. Hooker, husband of plaintiff, under which writ they had been levied upon as the property of the plaintiff's husband.

Whereupon plaintiff rested.

Whereupon the defendants to maintain the issues on their part joined, over the exception of the plaintiff, gave evidence that a bill

was filed on the Equity side of the Supreme Court of the District of Columbia, April 18, 1903, by Charles W. Richardson and others being Equity Cause No. 24084 against Thomas G. Hensey and Mellen C. Hooker, husband of the plaintiff, in which complainants claimed of the said defendants a sum of money in excess of $30,000; and that in said Equity cause a final decree was rendered on the 27th day of March 1906 against both of said defendants for the sum of $53819.17, with interest and costs under which decree defendants are trustees; that the said notes were seized under a writ of execution under said decree, issued by said defendants who were authorized by said decree to issue said writ.

Whereupon to further sustain the issues on their part joined, the defendants called the plaintiff, SADIE L. HOOKER, as a witness, and she testified as follows:

That she now is, and was at the time of the last illness of Lester M. Hooker, (who was her step son), and prior thereto, the wife of Mellen C. Hooker; that said Lester M. Hooker died in October 1905; that during his last illness, and just before being taken to the hospital for an operation, said Lester M. Hooker, believing that he might die under such operation and in contemplation of death, gave
16 her the policy of insurance, hereinafter referred to, certain stock, and about $1300. in money, and told her that in the event of his death he did not wish that she should be left destitute, and that he gave them to her as her property. And he thereupon handed to plaintiff the said policy of insurance and other property. To this action on the part of Lester M. Hooker, her husband, Mellen C. Hooker, who was then present, consented. Shortly thereafter said Lester M. Hooker was operated on and died. That no communication was made to the insurance company before or after the death of Lester M. Hooker in respect of said gift or delivery of said policy to the plaintiff by Lester M. Hooker, Mellen C. Hooker, or the plaintiff.

That after the death of Lester M. Hooker, the money obtained from the New York Life Insurance Company on said insurance policy was handed to the plaintiff by Mellen C. Hooker and that she deposited $1000.00 thereof in the American National Bank; that she had knowledge of the institution of Equity Cause No. 24084, and that her husband was one of the defendants therein, but she had no knowledge of the charges made therein, or of any of the details concerning the same, and did not expect her husband to be held liable thereunder. That she made no application to the insurance company upon the policy for payment thereof to herself, but that the proceeds therefrom were handed to her by her husband, Mellen C. Hooker, and that the eight notes involved in these proceedings were purchased out of funds to her credit in said Bank.

On cross examination the said witness testified that at the
17 time she gave the check mentioned in witness Moulton's testimony she had on deposit with the said American National Bank the sum of $1000. and the further sum of $600., the proceeds of a discount made by said bank to her upon collateral security, and

thereafter on the 24th day of November, she drew her said check against her said account in said bank, and could not tell whether the money invested in the notes was part of the proceeds of said insurance money or of said $600. so placed to her credit or of the other money given her by her son, but she thought the other money given her by her son was deposited in another bank; that she was the owner and holder of the notes described in the declaration when they were taken and still owns the same.

Whereupon to further sustain the issues on their part joined the defendants called MELLEN C. HOOKER, who testified that the money payable upon said policy was paid by the Insurance Company to him. That he cashed the check and handed the proceeds to his wife. That he did so because his son, Lester M. Hooker had in his presence and with his consent given and delivered said policy to his wife, Sadie L. Hooker, in his last illness, just before going to the hospital to undergo a serious operation, and stated that he desired her to take, and have the proceeds of, said policy. That his said son made him promise that he would see that his wife got the money, which he did. That he could not say whether he knew that he was the beneficiary named in said policy from a knowledge of the inside contents of the policy or from statements made by his son.

A paper purporting to be a copy of the policy of insur-
18 surance was produced by the plaintiff's counsel, and without objection was by the defendants offered in evidence and reads as follows:

(Page 1.)

"New York Life Insurance Company agrees to pay twenty-five hundred dollars to Mellen C. Hooker, father of the insured or to such beneficiary as may have been designated in the manner herein provided at the Home Office of the Company, in the City of New York, immediately upon receipt and approval of proofs of the death of Lester M. Hooker, the insured.

Change of Beneficiary.—The insured may change the beneficiary at any time, and from time to time, provided this policy is not then assigned. The insured may however declare the designation of any beneficiary to be irrevocable; during the lifetime of an irrevocably designated beneficiary, the insured shall not have the right to revoke or change the designation of that beneficiary. If any beneficiary or irrevocably designated beneficiary dies before the insured, the interest of such beneficiary shall vest in the insured. Every change, designation, or declaration must be made by written notice to the Company at the Home Office, accompanied by this policy, and will take effect only when endorsed on this policy by the Company.

This policy participates in the profits of the Company as herein provided.

The accumulation period will end twenty years after the date
19 specified on the third page as the date on which the policy takes effect. If the insured is living at the end of the accu-

mulation period, and if the premiums have been duly paid, and not otherwise, the Company will apportion to this policy its share of the accumulated profits, and the insured shall then have the option of one of the following:

Six accumulation benefits:

1. Receive the profits in cash, and continue this policy by payment of the same premium as previously, or

2. Receive the profits converted into an annual income for life, and continue this policy by payment of the same premiums as previously, or

3. Receive the profits converted into additional non-participating paid up insurance, subject to evidence of insurability satisfactory to the Company, and continue this policy by payment of the same premium as previously, or

4. Receive the entire cash value as stated below, converted into an annual income for life, and discontinue this policy, or

5. Receive the entire cash value as stated below, in cash, and discontinue this policy, or

6. Receive the entire cash value as stated below, converted into *into* non-participating paid up insurance payable at death and discontinue this policy.

* * * * * * *

This Company will send to the insured before the end of the accumulation period, a written statement of the results under
20 the six accumulation benefits. If the company does not receive from the insured a written selection of one of these benefits before the end of the accumulation period or within three months thereafter, it is agreed that this policy shall be discontinued and the entire cash value shall be converted into an annual income for life, as provided in the fourth benefit.

* * * * * * *

The company guarantees that the entire cash value of this policy at the end of the accumulation period shall be $618.00 in cash, and this policy's share of the accumulated profits then apportioned, also in cash.

(Page 2.)

Tables of Cash Loans, Paid up Insurance, and Automatic Term Insurance.

I. The cash loan available at any time on each $1000. of this policy, in accordance with the loan provisions on the third page is set forth in the table below designated "Table I, Cash loans," and is the sum found in the column under the age of the insured opposite the number representing the full years the policy has then been in force. To ascertain the total cash loan available, multiply that sum by the number of thousands of dollars and fractions thereof stated in the first line on the first page.

Illustration.—The cash loan available on each $1000. of a
21 policy issued at age 30 after the expiration of 8 full years is $106. The entire cash loan available therefore on a policy of say $2500. would be 2½ times $106. = $265.

II. The amount of paid up insurance on each $1000. of this policy in accordance with the non-forfeiture provisions on the third page is set forth in the table below, designated "Table II, paid up insurance," and is the sum found in the column, under the age of the insured, opposite the number representing the full years the policy has been in force. To ascertain the total amount of paid up insurance, multiply that sum by the number of thousand- of dollars and fractions thereof stated in the first line on the first page.

Illustration.—The amount of the paid up insurance on each $1000. of a policy issued at age 30 after the expiration of 8 full years is $200. The paid up insurance, therefore on a policy of, say $2500. would be 2½ times $200. = $500.

III. The period of automatic term insurance under this policy in accordance with the non-forfeiture provisions on the third page is set forth in the table below, designated "Table III., automatic term insurance," and will be found in the column under the age of the insured, opposite the number representing the full years the policy has been in force; this period being the same for policies of any amount must not under any circumstances be multiplied or increased.

Illustration.—The period of automatic term insurance
22 under a policy issued for $2500. at age 30, would after the expiration of 8 full years be 7 years and 10 months:

For figures relating to this policy, take column headed with age 27, the age of the insured.

Table I.	After the expiration of—	Age 27.
Cash loans, Based on a policy of $1000.	2 yrs.	$23
	3	31
	4	45
	5	60
	6	71
	7	82
	8	94
	9	106
	10	119
	11	132

Table II.	After the expiration of—	Age 27.
Paid up insurance based on a policy of $1000.	2 yrs.	$36
	3	72
	4	94
	5	119
	6	141
	7	164
	8	188
	9	210
	10	239
	11	262

12	286
13	308
14	337
15	363
16	385
17	407
18	429
19	451
21	473
22	495
23	516
24	536
25	555
26	574
27	593

Table III.	After the expiration of—	Yrs.	Mos.
Automatic term insurance.	2 yrs.	1	2
	3	2	4
	4	3	4
	5	4	5
	6	5	5
23	7	6	4
	8	7	3
	9	8	3
	10	9	3
	11	10	3
	12	11	2
	13	12	0
	14	12	9
	15	13	5
	16	13	11
	17	14	5
	18	14	9
	19	15	0
	20	15	3
	21	15	4
	22	15	4
	23	15	4
	24	15	3
	25	15	3
	26	15	2
	27	15	1
	28	14	11
	29	14	8
	30	14	5

(Page 3.)

Cash Loans.

The insured may obtain cash loans on the sole security of this policy, on written request at any time, after it has been in force two full years, if premiums are duly paid to the anniversary of the insurance next succeeding the date when the loan may be obtained. The insured shall pledge this policy and its accumulations as collateral security for such loans in accordance with the terms contained in the companies then existing form of policy loan agreement. The amount of loan available at any time is stated on the second page and includes loans then unpaid. Interest will be at the rate of 5% per annum, payable in advance to the next anniversary and annually in advance on that date and thereafter.

24 This policy is automatically non forfeitable.

As follows:

First. If any premium is not paid on or before the date when due and if there is no indebtedness to the company:

The insurance will automatically continue from such due date as term insurance as follows and no longer. Namely: for thirty-seven days, if premiums have been paid for three months; for forty-five days, if for six months; for fifty-three days, if for nine months; for sixty days, if for one year, and less than two years; and for the period specified on the second page if premiums have been paid for two or more years.

In lieu of such automatic term insurance on the insured's written request, within six months from such due date, but not otherwise, this policy will be endorsed for the amount of paid up insurance, if any, stated on the second page.

Second. If any premium or interest is not paid on or before the date when due, and if there is an indebtedness to the company,

Insurance for the net amount that would have been payable as a death claim on said due date will automatically continue from said due date as term insurance for such time as any excess of three fourths of the reserve under this policy over such indebtedness will purchase at the age of the insured on said due date, according to the company's present published table of single premiums for term insurance, and no longer.

25 In lieu of said automatic term insurance on the insured's written request, within six months from said due date, but not otherwise, this policy will be endorsed for such amount of paid up insurance as said excess will purchase at the age of the insured, on said due date, according to the company's present published table of single premiums.

The automatic term insurance and the paid up insurance as specified above shall be payable under the same conditions as this policy, but shall be without participation in profits, cash loans or further payment of premiums.

Reinstatement.—If any premium or interest is not paid on the date when due, the company will restore this policy as of the date

of such non payment, on payment by the insured of such premium or interest within one month thereafter with interest. The company will also restore this policy as of the date of such non-payment at any time after one month and within the accumulation period, under the following conditions: Written application to the Home Office with evidence of insurability satisfactory to the Company, payment of a sum equal to all the premiums that would have fallen due had all such premiums been paid on the dates when due up to the time of reinstatement, together with interest and the payment of any loans unpaid when the automatic term insurance or the paid up insurance began, with interest; except that within the last two years of the accumulation period this policy will not be restored if it has
26 then been continued as automatic term insurance or as paid up insurance for a period of more than three years.

Installment Benefits.—The insured may change the mode of payment of the proceeds of this policy as a death claim from payment in one sum as provided on the first page to payment by annual installments as provided on the 4th page.

General Provisions.—(1) Only the President, a Vice-President, a Secretary or the Treasurer has power on behalf of the Company to make or modify this or any contract of insurance or to extend the time for paying any premium, and the company shall not be bound by any promise or representation heretofore or hereafter made unless made in writing by one of said officers.

* * * * * * *

7. Any assignment of this policy must be made in duplicate and both sent to the Home Office, one to be retained by the Company and the other to be returned. The Company has no responsibility for the validity of any assignment.

8. The insured may without the consent of the beneficiary receive every benefit, exercise every right, and enjoy every privilege conferred upon the insured by this policy.

This policy is incontestable.

This policy takes effect as of the 28th day of April 1905. This agreement is made in consideration of the sum of $56.40,
27 the receipt of which is hereby acknowledged, constituting payment for the period terminating on the 28th day of April 1906, and in further consideration of the payment of a like sum on said date, and thereafter on the 28th day of April in every year during the continuance of this policy.

In witness whereof, The New York Life Insurance Company has caused this agreement to be signed by its president, and Secretary and countersigned by its Registrar or Assistant Registrar.

A. E. ORR, *President.*

SEYMOUR M. BALLARD, *Secertary.*

(Page 4.)

Installment Benefits.

The insured may change the mode of payment of the proceeds of this policy as a death claim at any time within five years from be-

ginning of the insurance, if not then assigned, from payment in one sum as provided on the first page to payment by annual installments, as stated below, provided the amount of such proceeds is $1000 or more. If the amount is less than $1000, the proceeds will be paid in one sum only.

* * * * * * *

The insured, having changed the mode of payment to annual installments, may at any time subsequently change the number of the installments, as may be desired, and as above illustrated, or entirely revoke any change, thereby making the proceeds of this
28 policy again payable in one sum.

* * * * * * *

Each change of mode of payment or revocation of any change, must be requested by the insured in writing, and shall not take effect until endorsed on this policy by the Company at the Home Office.

The beneficiary can neither assign nor commute unpaid installments unless such right is given to the beneficiary by the insured in writing, and is endorsed on this policy by the Company at the Home Office during the life time of the insured. If however, the proceeds of this policy or any parts thereof, are payable to executors, administrators, or assigns, such proceeds shall be paid in one sum."

Endorsement on Back:

"Register of change in mode of payment of proceeds under this policy as a death claim.

NOTE.—Change of mode of payment and revocation of any change must be requested in writing, and shall not take effect until endorsed on this policy, by the Company at the Home Office.

Date endorsed.	How payable.	Endorsed by"
.....	.....	.....

Endorsed on back:

" Register of change of Beneficiary:

NOTE.—No change, designation or declaration shall take effect until endorsed on this policy by the Company at the Home Office.

Date endorsed.	Beneficiary.	Endorsed by"
.....	.....	.....

29 Whereupon the defendant rested;

Whereupon the plaintiff rested;

And this being all the substance of the evidence,

Thereupon the defendants asked the Court to instruct the jury as follows:

1. The jury are instructed upon all the evidence to return a verdict for the defendants.

Refused. Exception.

2. If the jury believe from the evidence that the plaintiff deposited the proceeds of the policy referred to in this case or the amount thereof received by her in her own general or personal bank account, together with other funds; and thereupon from said general fund purchased the notes in question, then, they are instructed that the burden of proof is upon the plaintiff to show that the notes were purchased with funds other than those derived as the proceeds from said policy.

Refused. Exception.

3. The jury are instructed that if they believe from the evidence that the notes in controversy were purchased with money received from the New York Life Society by Mellen C. Hooker, as the beneficiary named in said policy, and if the jury further believe from the evidence that said policy was by said Lester M. Hooker delivered to the plaintiff, with the consent and in the presence of said Mellen C. Hooker, and that the said Lester M. Hooker then and there declared said policy to be the property of the plaintiff, with the consent of said Mellen C. Hooker, and if the jury further find
that the said Lester M. Hooker did not give written notice to
30 the said Company at its home office in the City of New York,
State of New York, accompanied by said policy, or that said Company failed to endorse thereon its consent to a change of beneficiary under said policy, and if you shall further find that the said money was paid, after the death of said Lester M. Hooker by said company to said Mellen C. Hooker, as the beneficiary therein named, then your verdict should be for the defendants.

Refused. Exception.

4. The*y* jury are instructed that the burden of proof is upon the plaintiff to show that the notes in question were purchased with her money, and that if the said notes were purchased with money which she had received from her husband, their verdict should be for the defendants.

Refused. Exception.

5. The jury are instructed that if they believe from the evidence that the notes in controversy were purchased with money received from the New York Life Assurance Company by a check payable to the order of Mellen C. Hooker, and if they believe that said Mellen C. Hooker was the husband of the plaintiff, and was such husband at the time of such payment, and if they believe that said check was the proceeds of a policy of life insurance in said company, wherein Lester M. Hooker was the assured, and Mellen C. Hooker was beneficiary, then they are instructed that their verdict should be for the defendants.

Refused. Exception.

6. The jury are instructed that if they shall fail to find from the evidence that Lester Hooker requested or gave notice to
31 the Insurance Company referred to in this cause that he desired a change of beneficiary in said policy referred to or that said company consented to such change and endorsed upon said

policy its consent to such change, and if the jury further find as a matter of fact that said money due upon said policy after the death of said Lester M. Hooker was paid to said Mellen C. Hooker, named as beneficiary in said policy by said company then the jury are instructed that as matter of law said Mellen C. Hooker was the person entitled to receive the same as the beneficiary under the terms of said policy.

Refused. Exception.

And thereupon the Court refused to grant the prayers numbered one to six inclusive asked by the defendants, and each of them were by the court refused, to which rulings of the Court, and each of them, the defendants, by their counsel, then and there duly excepted, and said exceptions were noted at the time by the Justice presiding upon his minutes;

And thereupon the Court voluntarily and of its own motion charged the jury as follows:

GENTLEMEN: The object of this suit is to recover from the defendants certain promissory notes, about which you have all heard, and which have been described in the course of these proceedings. Under the ruling of the Court, there is but one question for you to determine, and that is whether Lester M. Hooker, the stepson of the plaintiff here made an assignment of the insurance policy described to his mother, with the intention that it should be-
32 come her property and to the end that she might receive the amount named in that policy in the event of his death. Now the burden of proof is upon her to satisfy you that that is true. That is, that he did make the assignment of the policy at the time, and under the circumstances detailed in the course of this testimony. And if you should find that he did transfer this policy to her at the time and place indicated by the testimony, at which the husband was present, and he (husband) consented to it, then your verdict will be for the plaintiff for the possession of these notes, and for nominal damages. If on the other hand you are not satisfied from the evidence that this transaction occurred in good faith, that it is not true that he made an assignment and delivery on this policy to his mother, why then your verdict must be for the defendants.

Now you take into consideration all the circumstances, and facts of the case. The fact that there was no written assignment of the policy. I have ruled that so far as the plaintiff is concerned, that her right to the proceeds of that policy does not depend upon a written assignment of the policy to her with the consent of the company. Because it was for the company to raise that question, and to object to it; but nevertheless you may consider that fact with all the other circumstances as bearing upon the question whether any such transaction occurred at all; and if you are satisfied as I have stated, that the policy was delivered to the mother by the son to be collected and held by her as her individual property, then your verdict should be for the plaintiff, as I have stated.

33 Whereupon the defendants, by their counsel, again objected to the refusal of the Court to grant the said prayers numbered one to six inclusive, and to the refusal to grant each of the

said prayers, and noted again their said exceptions to the refusal of the Court to grant said prayers and each of them; and the defendants, by their counsel further excepted to the charge of the Court limiting the question before the jury to the one question as to whether or not there was an assignment by oral delivery of the policy; and in stating to the jury that as matter of law that upon finding such fact, they should find for the plaintiff.

And be it further remembered that the defendants by their counsel interposed and objected separately and severally to the rulings of the Court as hereinbefore set forth, during the trial of said cause, and each of them, and the separate and several rulings of the Court upon the prayers, as hereinbefore set forth, and to each of them, but the Court overruled the said separate and several objections; to which rulings of the Court, the defendant, by their counsel, then and there and before the jury retired separately and severally excepted, and said exceptions were then and there separately and severally duly noted upon the minutes of the Justice presiding, at the trial; and counsel for the defendants then and there prayed the Court and now prays the Court to sign and seal this bill of exceptions, to have the same force and effect as if each of said exceptions were separately and severally set forth in a separate bill of exceptions,

34 and at the request of said counsel for the defendants the same is accordingly signed and sealed and made a part of the record of this cause, now for then, this 4th day of December, A. D. 1908.

By the Court:

THOS. H. ANDERSON,
Asso. Justice.

* * * * * * *

Wharton G. Lester, Esq., Counselor-at-Law.

DEAR SIR: In accordance with rules of Court, I herewith tender you a copy of bills of exceptions in the above cause, and beg to give notice that I shall present the original of which the annexed is a true copy, to the Court for its approval on Friday, Nov. 13" 1908, at the hour of 10 o'clock, A. M., or as soon thereafter as counsel can be heard. Before Justice Anderson.

CHARLES H. MERILLAT,
MASON N. RICHARDSON,
CHARLES S. SHREVE, JR.,
Attorneys for Defendants.

Service acknowledged Oct. 29" 1908.

WHARTON E. LESTER,
Att'y for Pl't'f.

35 *Directions to Clerk for Preparation of Transcript of Record.*

Filed December 7, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

At Law. No. 49993.

SADIE L. HOOKER
vs.
CHARLES H. MERILLAT ET AL., Trustees.

The Clerk will please prepare the record for appeal in the above cause, said record to consist of the following:

Declaration in replevin;

Writ of replevin, and endorsement thereon;

Note showing undertaking on appeal from Justice Court, and approval thereof by the Court;

The certificate of the Justice of Appeal;

Note showing jury trial;

The verdict of the jury;

The opinion of the Court filed Oct. 26, 1908 (Justice Anderson);

Note of motion for new trial, and that it was overruled;

The bill of exceptions as approved by the Justice trying said cause, and his approval thereof;

The entry of judgment;

Note showing appeal in open court, and date thereof;

36 Note of bond on appeal to the Court of Appeals, and approval thereof, showing date of such approval by Justice Anderson;

A copy of this notice.

CHARLES H. MERILLAT,
MASON N. RICHARDSON,
CHARLES S. SHREVE, JR.,
Attorneys for Appellants.

CHARLES H. MERILLAT AND
MASON N. RICHARDSON,
Trustees.

To Wharton G. Lester, Esq., Attorney for Sadie L. Hooker.

DEAR SIR: Please take notice that we have this 5" day of Dec. 1908 filed the above notice of request for record on Appeal.

MASON N. RICHARDSON,
Attorney for Appellants.

Service acknowledged Dec. 5 1908.
WHARTON E. LESTER,
Attorney for Sadie L. Hooker.

37 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 36, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49993 at Law, wherein Sadie L. Hooker is Plaintiff and Charles H. Merillat and Mason N. Richardson are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 31st day of December, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1977. Charles H. Merillat *et al.*, appellants, *vs.* Sadie L. Hooker. Court of Appeals, District of Columbia. Filed Jan. 2, 1909. Henry W. Hodges, Clerk.